Bundesanstalt für
Finanzdienstleistungsaufsicht

BaFin

Frequently asked questions (FAQs) regarding the ban on naked short-selling transactions in shares and certain debt securities pursuant to section 30h of the German Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG)

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Scope of application

1. What is the scope and structure of the statutory ban?

Pursuant to section 30h (1) sentence 1 to 3 of the WpHG, the ban on naked short-selling transactions applies

a) to shares within the meaning of section 2 (1) sentence 1 number 1 of the WpHG; and
b) debt securities within the meaning of section 2 (1) sentence 1 number 3 of the WpHG which are issued by central governments, regional governments or local authorities of Member States of the European Union whose legal currency is the euro,

which are admitted to trading on a regulated market of a stock exchange in Germany.

In the case of debt securities, section 37 of the Stock Exchange Act (*Börsengesetz* – BörsG) whereby debt securities are deemed to be admitted shall not be applied. Rather, what is decisive is whether the respective debt security is actually quoted on a regulated market of a stock exchange in Germany.

2. Are foreign currency bonds of EU Member States whose legal currency is the euro also concerned?

Yes, the ban provision also covers debt securities which have not been issued in euros. The only decisive criterion is that the euro is the legal tender of the EU Member State in question.

Example:

A government bond issued by the French Republic is also covered by the provisions of section 30h of the WpHG, like bonds of the Free State of Saxony or the City of Frankfurt am Main, as long as these are admitted to trading on a regulated market of a stock exchange in Germany. This would also apply if such debt securities were issued in US dollars or another currency.

3. Are financial instruments admitted to trading on the regulated unofficial market (*Freiverkehr*) or another multilateral trading facility (MTF) covered?

No, given the link to admission to trading on a regulated market of a stock exchange in Germany, all securities exclusively admitted to trading on the regulated unofficial market (*Freiverkehr*) or other multilateral trading facility (MTF) are not covered by the ban.

4. Do shares of companies domiciled abroad fall under the ban?

No, given the link to admission to trading on a regulated market of a stock exchange in Germany, the decisive criterion for the shares of companies domiciled abroad is whether their shares are exclusively admitted to trading on a regulated market of a stock exchange in Germany. If shares of such company are additionally admitted to trading on a further stock exchange abroad, such shares are not subject to the ban.

Example:

A share of a company domiciled in Austria which is exclusively admitted to trading on a regulated market of a stock exchange in Germany falls under the ban of section 30h of the WpHG.

Example:

A share of a company domiciled in Luxembourg which is admitted to trading on a regulated market of a stock exchange in Luxembourg and of a stock exchange in Germany does not fall under the ban of section 30h of the WpHG.

5. Does the ban also concern intraday short positions?

No, intraday naked intraday short-selling transactions do not fall under the short-selling ban of section 30h of the WpHG. However, the short-selling transaction must be covered no later than at the end of the respective trading day.

6. Does the ban also refer to derivatives?

No, the ban on short selling pursuant to section 30h (1) of the WpHG refers only to shares and certain debt securities, but not to derivatives. Derivatives therefore do not fall within the scope of the provision. In this regard it does not matter whether on an economic view the respective derivative is to be deemed equivalent to a short position.

Example:

If a trading participant short-sells a future uncovered, this does not constitute a violation of section 30h of the WpHG.

However, restrictions may arise for trading in derivatives if, for example, the risk positions created are hedged by an naked short sale of shares within the meaning of section 30h of the WpHG.

7. Can sales of derivatives on shares and debt securities be prohibited?

Pursuant to section 4a (1) no. 1a of the WpHG, transactions in derivatives may be prohibited by BaFin for a limited period in certain crisis situations. In the event that such measures should be decreed, they will be announced in accordance with the provisions of administrative law and published on the BaFin website.

8. Do short positions in shares arising from trading in options fall under the ban?

No, for example the sale of a call option (short call) does not yet result in a short position in shares. A short position arises only when the call option is exercised, since it is only then that a delivery obligation arises with the option writer who then has to settle the same. However, this short position is not relevant for the ban because it arises from exercise of the option and not from a sale of the share.

9. Are units in an exchange traded fund (ETF) covered by the ban?

Here, a distinction has to be made:

Shares in an exchange traded fund (ETF) issued by an asset management company (asset management company model - *Kapitalanlagegesellschaftsmodell*) do not fall under the ban on naked short-selling transactions pursuant to section 30h (1) of the WpHG. This also applies if the ETF includes or represents shares that are covered by the ban of section 30h of the WpHG. That is because section 30h (1) of the WpHG prohibits naked short-selling transactions in shares and certain debt securities. Although shares in an ETF represent securities under the asset management company model (cf. section 2 (1) sentence 2 of the WpHG), these are not shares or debt securities within the meaning of section 2 (1) sentence 1 nos. 1 and 3 of the WpHG.

By contrast, shares in an ETF issued by an investment stock corporation (investment stock corporation model - *Investmentaktiengesellschaftsmodell*) are subject to the ban on naked short-selling transactions pursuant to section 30h (1) of the WpHG because these units are shares within the meaning of section 2 (1) sentence 1 no. 1 of the WpHG.

The classification of the specific share in question as a share or other security may have to be inquired of with the issuer in question as appropriate; a corresponding list has not been made available by BaFin.

10. Does the ban also apply to naked short-selling transactions performed abroad and/or by foreign nationals?

Yes, pursuant to section 1 (2) of the WpHG it does not matter whether the shares or debt securities covered by the prohibiting provision of section 30h of the WpHG are traded in Germany or abroad. Neither is the nationality of the trading participants or their domicile of any relevance in this regard. The only decisive criterion is the admission of the financial instruments (shares/debt securities) concerned by the transaction to trading on a regulated market of a stock exchange in Germany (or in the case of shares of companies domiciled abroad, their exclusive admission to trading on a regulated market of a stock exchange in Germany).

Example:

If a trading participant domiciled in China short-sells a German share uncovered on a US stock exchange which is admitted to trading on a regulated market of a German stock exchange, this constitutes a violation of section 30h of the WpHG.

11. What influence does the trading venue have on the existence of the ban?

Just like the place of conclusion of a naked short-selling transaction, the market on which the short sale was performed is without relevance. Where a naked short sale of the financial instruments covered by section 30h (1) of the WpHG is effected off-exchange (OTC), this also falls under the ban.

Coverage of short-selling transactions

12. Can a short-selling transaction be covered by a securities lending transaction or by a securities repurchase transaction (repo)?

Yes, a short-selling transaction may be covered by a securities lending transaction or by a securities repurchase transaction (repo) if the securities under the agreement have already been transferred to the borrower/short seller (ownership pursuant to section 30h (1) sentence 4 no. 1 of the WpHG) or if a lending agreement has been concluded (unconditionally enforceable claim pursuant to section 30h (1) sentence 4 no. 2 of the WpHG). The securities do not necessarily have to have been transferred to the securities account.

13. Is the conclusion of a locate agreement sufficient to cover a short-selling transaction?

The conclusion of a locate agreement satisfies the requirements of section 30h (1) sentence 4 no. 2 of the WpHG (unconditionally enforceable claim) only if the delivery of the corresponding securities has been sufficiently secured, for example by the agreement of damage compensation payments.

14. When does a coverage transaction have to be concluded and does the unconditionally enforceable claim also have to be due on conclusion?

At the latest by the end of the day when the short sale was concluded, the corresponding shares or debt securities must be procured (section 30h (1) sentence 4 no. 1 of the WpHG) or an unconditionally enforceable claim on these must have been established (section 30h (1) sentence 4 no. 2 of the WpHG). To determine the time limit, the respective end of the selling date in the time zone in which the uncovered short-selling transaction was performed is decisive.

For assessing the question of whether an unconditionally enforceable claim exists, what is decisive according to the spirit and purpose of the provision is whether under the contractual agreement the shares/debt securities are transferred in such timely manner that the creditors (=short sellers) are put in a position to settle the obligation arising from the short sale on time. For this reason, the unconditionally enforceable claim does not necessarily have to be due on the date when the short-selling transaction was performed.

Example:

If a trading participant short-sells a share admitted to trading on a regulated market of a stock exchange in Germany and on the same day concludes a spot transaction for a corresponding number of shares of the same class, this does not constitute a violation of section 30h of the WpHG if the settlement of the spot transaction under the agreement takes place in such timely manner that the obligation under the short-selling transaction can be settled on time.

15. Can a short-selling transaction be covered by a derivative?

Yes, derivatives issued with certain terms may cover a short-selling transaction if they can be qualified as an unconditionally enforceable claim within the meaning of section 30h (1) sentence 4 of the WpHG.

a. Can a short-selling transaction be covered by a future?

A short-selling transaction may be covered by a derivative counter-position in the form of a futures long position only if the delivery date under the future for the underlying is agreed in such a way that the obligation under the short-selling transaction can be settled on time. However, such coverage requires that physical settlement has been agreed. Agreement of cash settlement is not sufficient.

b. Can a short-selling transaction be covered by a call option?

Here, a distinction has to be made:

A short-selling transaction can be covered by a derivative counter-position in the form of an American call option with physical settlement. Already on its conclusion, an American option for the option holder represents an unconditionally enforceable claim within the meaning of section 30h (1) sentence 4 no. 2 of the WpHG because the option holder has the right to exercise it at any time during its term.

By contrast, a short-selling transaction may be covered by a European call option allowing for physical settlement exercisable exclusively at the end of the term only if the exercise enables the underlying to be transferred in such timely manner that the obligation under the short-selling transaction can thereby be settled on time.

Example:

If a trading participant short-sells a share admitted to trading on a regulated market of a stock exchange in Germany and purchases as coverage a European call option whose term ends only after the settlement date under the short-selling transaction, this is an uncovered short-selling transaction and thus a violation of section 30h of the WpHG.

16. To what extent are as yet unissued shares affected by the ban?

The provisions of the ban relate only to shares already issued at the time the transaction is concluded. That means that, e.g., transactions for shares not yet issued which are performed as part of a capital increase are not affected.

17. Can claims to as yet unissued shares (subscription rights) cover a short-selling transaction?

No, a distinction has to be made between direct and indirect subscription rights:

Claims under the law of obligations or under property law to transfer of title in such shares (e.g. by reason of a specific subscription right claim and/or subscription rights acquired by trading in subscription rights) cannot provide coverage of an naked short-selling transaction. A performance claim to allotment of young shares, and thus an unconditionally enforceable claim within the meaning of section 30h (1) sentence 4 of the WpHG that can result in coverage of a short-selling transaction, exists only from the time the execution of the capital increase is recorded in the commercial register. Subscription rights are thus not capable of covering a short-selling transaction.

In the case of indirect subscription rights in which an issuing bank becomes the owner of the new shares by virtue of recording of the execution of the capital increase in the commercial register, the issuing bank, from the time title is transferred to it, has an obligation to offer the new shares for subscription. In this case the shareholder with subscription entitlement may have an unconditionally enforceable claim to a transfer of the new shares within the meaning of section 30h (1) sentence 4 of the WpHG (which rules out an naked short-selling transaction) from the time when such shareholder concludes the purchase contract with the issuing bank.

Exemptions for market makers and other providers of liquidity

18. To what extent are market makers and other providers of liquidity concerned by the provisions of the ban of section 30h of the WpHG?

Market makers as well as persons and companies performing similar liquidity-providing functions on the financial markets are exempted from the ban on naked short-selling transactions subject to the conditions of section 30h (2) sentence 1 of the WpHG. It does not matter what name is given to the activity. What is decisive instead is that the statutory requirements are met, meaning that, e.g., designated sponsors and liquidity providers may also be included in addition to market makers and lead brokers (*Skontroführer*).

The transaction underlying the short sale must be necessary for performance of the activity as market maker. Consequently, a company may not make the claim, by virtue of its activity pursuant to section 30h (2) sentence 1 of the WpHG, to being exempted from the ban for its entire trading activities. Rather, each individual transaction must satisfy in the entirety the prerequisites of the respective exceptional elements for which the exemption is claimed.

To claim the exemption, the activity must be reported to BaFin stating the financial instruments affected in each case (see items 19. and 20.).

a. What activities are to be ascribed to section 30h (2) sentence 1 no. 1 of the WpHG?

The activities of a market maker and of a lead broker (*Skontroführer*) which acts as a market maker in terms of its functions are generally to be ascribed to section 30h (2) sentence 1 no. 1 of the WpHG.

Moreover, the activity must have a certain degree of continuity and regularity and the underlying transaction must be necessary for performance of this activity.

b. What activities are to be ascribed to section 30h (2) sentence 1 no. 2 of the WpHG?

Particularly the classic activity of the lead broker (*Skontroführer*) in the financial instruments covered by the ban (name-to-follow business) is to be ascribed to section 30h (2) sentence 1 no. 2 of the WpHG. An important criterion is the performance of transactions initiated by the customer. Moreover, the activity must have a certain degree of continuity and regularity and the underlying transaction be necessary for performance of this activity.

c. What requirements does the criterion of regularity and continuity have to satisfy in terms of the activity of a market maker?

The question of whether the criterion of 'regular' and 'continuous' is satisfied with reference to the specific financial instrument is something that can only be assessed on a case-by-case basis. For example, it is not sufficient for the activity to be performed only temporarily, for example in the context of a particularly favourable market situation. However, this activity is not required to be performed based on an agreement with a stock exchange, an issuer or on some other contractual basis. Thus, market making without a contractual obligation for price determination purposes may be covered by the exemption.

d. Is market making in options also exempted from the ban?

Yes, according to the spirit and purpose of the provision the entire market maker activity in options is exempted from the ban and to be ascribed to section 30h (2) sentence 1 no. 1 of the WpHG. The prerequisites of the exception must be satisfied in this case also; in particular, the respective underlying transaction must be necessary for performance of the activity as market maker.

Example:

If a market maker engaging in market making in European options with physical settlement short-sells the underlying (share) uncovered in order to hedge the position (e.g. short put), this is a short-selling transaction of the share of relevance for the ban but is nonetheless exempt from the ban pursuant to section 30h (2) sentence 1 no. 1 of the WpHG.

For the exemption to be claimed the activity, pursuant to section 30 (2) sentence 3 of the WpHG, must be notified specifying the respective financial instrument (share, debt security) which is covered by the ban of section 30h (1) of the WpHG and not the derivative relating to the shares or debt securities relevant for the ban.

19. How is the reporting requirement i.a. to be fulfilled for market makers?

The details of the reporting requirement are determined by the provisions of the Short-Selling Reporting Regulation (*Leerverkaufs-Anzeigeverordnung* – LanzV), which entered into force on 16 April 2011.

Investment services enterprises wishing to claim the exemptions from the ban on short selling must report BaFin pursuant to section 30h (2) sentence 3 in conjunction with sentence 1 of the WpHG their intention to take up an activity pursuant to section 30h (2) sentence 1, stating all financial instruments concerned, without undue delay pursuant to section 3 sentence 1 of the LanzV (initial notification).

Pursuant to section 3 of the LanzV, any subsequent changes with regard to the financial instruments concerned must be sent to BaFin without undue delay after the end of the quarter in which they have occurred with reference to the last day of the quarter as reference date (section 4 of the LanzV, notification of change).

In both cases it is not sufficient for a general notification to be made (e.g. to the effect that such activities are performed for all shares listed on a certain stock exchange). Rather, the activity must be notified specifying the respective financial instrument (share, debt security) which is covered by the ban of section 30h (1) of the WpHG.

If no changes have occurred during a quarter as compared with the last notification (notification of holdings), – unlike past administrative practice – only the up-to-dateness of the information already sent has to be confirmed in writing without undue delay after the end of each quarter.

20. How and where do market makers and others have to submit the notification?

The complete, dated and signed notification must be sent in writing using the form provided for this purpose on the BaFin website both by fax to +49 (0)228/4108-3479 and by e-mail to anzeige-leerverkaeufe@bafin.de.

Further exemption provisions and obligations

21. Are fixed price transactions exempted from the ban on short selling?

Yes, fixed price transactions pursuant to section 30h (2) sentence 2 of the WpHG are also exempted from the ban. Such transaction exists where a trading participant effects a naked short-selling transaction to perform a customer order and the price of this transaction is a defined price or a price to be determined on the basis of specific criteria.

Example:

A customer agrees with a bank to purchase 10,000 shares of a certain company at a defined price. However, if the bank does not have any holdings of its own in this share (→ naked short-selling transaction) and purchases these only in the course of the next trading day to deliver the same to the customer, this does not constitute any violation of section 30h of the WpHG.

22. Are also selling and purchase orders based on an average volume-weighted price exempted from the ban?

Yes, both customer sale and purchase orders based on an average volume-weighted price ("AQR"/"VWAP") are to be qualified as fixed price transactions within the meaning of section 30h (2) sentence 2 of the WpHG. Any naked short-selling positions arising in the performance of the transaction as such are exempted from the bans on short selling pursuant to section 30h (1) of the WpHG.

Example:

A customer purchases from a bank 10,000 shares at an average volume-weighted price. The price determination is to be included in the closing auction. If the bank does not succeed in achieving full coverage with the closing auction, this is an naked short-selling transaction since the bank has entered into an obligation towards the customer to deliver 10,000 shares but cannot procure coverage on the same day. But since this naked short-

selling transaction is based on the fixed price transaction agreed with the customer, it does not constitute a violation of section 30h of the WpHG.

23. Is there an obligation for banks and financial services providers to notify suspected naked short-selling transactions on the part of their customers?

Investment services enterprises, other credit institutions, asset management companies (*Kapitalanlagegesellschaften*) and operators of off-exchange markets on which financial instruments are traded are required pursuant to section 10 of the WpHG to notify BaFin without undue delay of any facts giving rise to suspicions of a violation of the ban on short-selling transactions pursuant to section 30h of the WpHG.

For this purpose, the form provided on the BaFin website is to be used:

http://www.bafin.de/cln_161/nn_2097014/DE/Unternehmen/BoersennotierteUnternehmen/Leerverkaeufe/Verbote_nach_30h_und_30j_WpHG/verbote_nach_wphg_node.html?__nnn=true

24. Does the ban on short selling have an impact on the provisions of the General Decree for Net Short-Selling Positions of 4 March 2010?

No, there are no changes with regard to the provisions of the General Decree of 4 March 2010 under which market participants are required to notify BaFin of net short-selling positions in selected financial stocks as of a threshold of 0.2% and to additionally publish the same as of a threshold of 0.5%. The notification and publication obligations must continue to be performed in full independent of the ban of section 30h of the WpHG. On 31 January 2011, BaFin extended the General Decree with regard to notifications for net short-selling positions until the expiry of 25 March 2012.

25. How are any violations of the ban of section 30h (1) of the WpHG or the notification obligation of section 10 (1) of the WpHG sanctioned?

Violations of the ban on naked short selling in shares and debt securities (section 30h (1) of the WpHG) will be punished by a fine of up to 500,000 euros.

Violations of the obligation to submit suspicious transaction reports in respect of naked short-selling transactions (section 10 (1) of the WpHG) carry a fine of up to 50,000 euros.

Note:

These FAQs are regularly updated by BaFin. Last updated on: June 2011.

Frequently asked questions (FAQs) regarding the ban on naked credit derivatives pursuant to section 30j of the WpHG

Scope of application

1. What is the scope and structure of the statutory ban?

By section 30j (1) of the WpHG, the conclusion of credit default swaps (CDS's) or assumption of the same are prohibited for the protection buyer if at least also a liability of central governments, regional governments or local authorities of Member States of the European Union from the euro zone serves as a reference liability. Consequently, a reference liability may be both a debt security issued by a country (e.g. a government bond issued by the French Republic) and a debt security of a federal state (e.g. the Free State of Saxony) or a debt security of a city or municipality (e.g. bond of the City of Frankfurt am Main). The ban also applies if CDS's are embedded in other instruments, e.g. credit-linked notes or total return swaps.

2. To what extent are there exemptions from the ban on naked credit derivatives?

Exemptions from the ban are provided if as a result of the CDS, based on an economic view, a more than insignificant reduction of the credit risk is achieved in an existing

position or a position assumed in a direct temporal relationship to the conclusion of the respective credit derivative in a reference liability.

The same shall apply where another existing position (or position assumed in a direct temporal relationship to the conclusion of the credit derivative) was entered into in another financial instrument or in another existing liability which may suffer a loss in value if the creditworthiness of the debtor of the reference liability worsens. In this regard it does not matter whether the liability to be secured was issued by a state or a company.

A more than insignificant reduction in the credit risk exists in any case if the default of the reference liability is capable of causing the default of the ultimately secured liability. It may thus be based on an assessment of whether it appears plausible that the default of a reference debtor will make it likely that the ultimately secured financial instrument will suffer a substantial loss in value. In this regard, it is advisable for the protection buyer to ensure sufficient documentation.

3. Does the ban also concern intraday positions?

Yes, unlike the ban on naked short selling of shares and certain debt securities (section 30h (1) of the WpHG), the ban also concerns intraday positions.

4. Does the ban also apply to the protection seller?

No, the ban on credit derivatives applies only to the protection buyer of a CDS.

5. Does it suffice in a corporate group for a protection interest to exist in a company other than in the one which is the protection buyer of a CDS?

Yes, within a corporate group it is sufficient for one company to establish or legally enter into a CDS and for another company of the same corporate group to have the corresponding protection interest.

6. May a CDS hedge the risk under another CDS?

Yes, a protection interest may also exist if positions in other CDS's are to be hedged.

7. Can a significant reduction of credit risk be defined quantitatively?

The protection buyer must perform its own plausible and verifiable assessment. No threshold or similar will be specified for this.

8. Does there have to be a 1:1 ratio between the CDS and the reference liability?

No, it is sufficient if the CDS can be assigned one or more existing positions for which the CDS brings about a more than insignificant reduction of credit risk. In this connection it does not matter whether the positions are held in the same portfolios, nor is it of any relevance whether they are recorded in the same books (trading book (*Handelsbuch*), banking book (*Anlagebuch*)).

9. Does the ban also concern transactions abroad?

No, the ban relates only to transactions that have actually been concluded in Germany. What is decisive in this regard is the place of conclusion of the contract under civil law. The place where the transactions are recorded, however, does not matter. Also follow-up activities of the concluded transaction, such as the exchange of confirmations, as a rule are of no relevance in this connection.

Exemptions for market makers and other providers of liquidity

10. To what extent are market makers and other providers of liquidity concerned by the provisions of the ban of section 30j of the WpHG?

Market makers as well as persons and companies performing similar liquidity-providing functions on the financial markets are exempted from the ban on naked CDS's subject to the conditions of section 30j (3) sentence 1 of the WpHG. It does not matter what name is given to the activity. Rather, what is decisive is that the statutory requirements are met.

The underlying transaction in each case must be necessary for performance of the activity. Consequently, a company may not make the claim, by virtue of its activity pursuant to section 30j (3) sentence 1 of the WpHG, to being exempted from the ban for its entire trading activities. Rather, each individual transaction must satisfy in the entirety the prerequisites of the respective exceptional elements for which the exemption is claimed.

To claim the exemption, the activity must be reported to BaFin stating the credit derivatives affected in each case (see item 12.).

11. How is the reporting requirement i.a. to be fulfilled for market makers?

The details of the reporting requirement are determined by the provisions of the Short-Selling Reporting Regulation (*Leerverkaufs-Anzeigeverordnung* – LanzV), which entered into force on 16 April 2011.

Investment services enterprises wishing to claim the exemptions from the ban of section 30j of the WpHG must report BaFin their intention to take up an activity pursuant to section 30j (2) sentence 2 in conjunction with sentence 1 of the WpHG, stating all financial instruments concerned, without undue delay pursuant to section 3 sentence 1 of the LanzV (initial notification).

Pursuant to section 3 of the LanzV, any subsequent changes with regard to the financial instruments concerned must be sent to BaFin without undue delay after the end of the quarter in which they have occurred with reference to the last day of the quarter as reference date (section 4 of the LanzV, notification of change).

In both cases it is not sufficient for a general notification to be made (e.g. to the effect that such activities are performed for all shares listed on a certain stock exchange).

If no changes have occurred during a quarter as compared with the last notification (notification of holdings), – unlike past administrative practice – only the up-to-dateness of the information already sent has to be confirmed to BaFin in writing without undue delay after the end of each quarter.

12. How and where do market makers and others have to submit the notification?

The complete, dated and signed notification must be sent in writing using the form provided for this purpose on the BaFin website both by fax to +49 (0)228/4108-3479 and by e-mail to anzeige-leerverkaeufe@bafin.de.

Miscellaneous

13. Is there an obligation for banks and financial services providers to notify suspected naked credit default swaps (CDS's) on the part of their customers?

There is no additional obligation for the bank to monitor compliance with the ban in respect of the trading activities of its customers. However, investment services enterprises, other credit institutions, asset management companies (*Kapitalanlagegesellschaften*) and operators of off-exchange markets on which financial instruments are traded are required pursuant to section 10 of the WpHG to notify BaFin without undue delay of any facts giving rise to suspicions of a violation of the ban on certain credit derivatives pursuant to section 30j of the WpHG.

For this purpose, the form provided on the BaFin website is to be used:

http://www.bafin.de/cln_161/nn_2097014/DE/Unternehmen/BoersennotierteUnternehmen/Leerverkaeufe/Verbote nach 30h und 30j WpHG/verbote nach wphg node.html?__nnn=true

14. How are any violations of the ban of section 30j (1) of the WpHG or the notification obligation of section 10 (1) of the WpHG sanctioned?

Violations of the ban on certain credit derivatives within the meaning of section 30j (1) of the WpHG will be punished by a fine of up to 500,000 euros.

Violations of the obligation to submit suspicious transaction reports in respect of naked CDS's (section 10 (1) of the WpHG) carry a fine of up to 50,000 euros.

Note:

These FAQs are regularly updated by BaFin. Last updated on: June 2011.